

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON HUMAN SERVICES**

**Call to Order:** By **CHAIRMAN ARLENE BECKER**, on March 14, 2005 at 3:00 P.M., in Room 472 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Arlene Becker, Chairman (D)  
Rep. Don Roberts, Vice Chairman (R)  
Rep. Mary Caferro (D)  
Rep. Emelie Eaton (D)  
Rep. Gordon R. Hendrick (R)  
Rep. Teresa K. Henry (D)  
Rep. William J. Jones (R)  
Rep. Dave McAlpin (D)  
Rep. Tom McGillvray (R)  
Rep. Mike Milburn (R)  
Rep. Art Noonan (D)  
Rep. Ron Stoker (R)  
Rep. Pat Wagman (R)  
Rep. Bill Warden (R)  
Rep. Jonathan Windy Boy (D)

**Members Excused:** Rep. Tom Facey, Vice Chairman (D)

**Members Absent:** None.

**Staff Present:** Susan Fox, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted: HB 723, 3/10/2005  
SB 46, 3/10/2005  
SB 308, 3/10/2005  
Executive Action: SB 29; SB 121; and SB 153, Be  
Concurred In  
SB 127 Be Concurred In As Amended  
SB 156 Tie Vote

**HEARING ON HB 723****Sponsor:** REP. GARY BRANAE, HD 54, BILLINGS**Opening Statement by Sponsor:**

**REP. GARY BRANAE** opened the hearing on **HB 723**. Prescription drug prices are a big problem for all Montanans and senior citizens in particular. There have been discussions about how best to make drugs affordable. He explained how he and Bill Kennedy, Yellowstone County Commissioner, had worked on a plan for bulk purchases of prescription drugs specifically for senior citizens. They had planned to set up a pool whereby people could order their drugs through a pharmacy. An order would be placed through the State for the drugs. The drugs would be shipped to the pharmacies. By pooling, they hoped people could purchase the drugs at a cheaper price. This idea had not come about but he hoped that it was still a possibility. Therefore, that is the reason for this bill; it is to study methods for reducing prescription costs. Hopefully, by next session, he would have a bill that would reduce prescription costs.

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 6.2}*****Proponents' Testimony:**

**Jim Smith, Montana Pharmacy Association**, said that his group was willing to be involved in the study. He hoped there would be a discussion on pricing within the industry. Wal-Mart cannot get access to the same prices for certain drugs or devices that hospitals get. He spoke about an inhaler for asthma. Wal-Mart, who does bulk purchasing, sells an inhaler for about \$20. One from the hospital might cost \$2.99. Therefore, that has nothing to do with bulk purchasing. It is how prices are set for various classes of trade. Hospitals and institutions are treated one way and retail pharmacies are treated another.

***{Tape: 1; Side: A; Approx. Time Counter: 5.5 - 10.2}***

**Bill Kennedy, Yellowstone County Commissioner**, explained that this was the third time they had come to the legislature to talk about buying drugs in bulk. He spoke about the high cost of prescription drugs and gave several examples. He felt that the State needs to put a policy together for Montana and the only way to do that is to have an interim study. It was recommended that a bill be drafted requesting a study. There is \$41,000 in the fiscal note to fund this study and this money comes from the old tobacco fund in I-146. With the interim study, they will be able to come back in 2007 with a way to help Montanans.

***{Tape: 1; Side: A; Approx. Time Counter: 10.2 - 14.7}***

**Dennis Iverson, Pharmaceutical Research and Manufacturers of America**, stood in support of HB 723. He was sorry that this had not been started two years ago and was willing to do all they could to help the process along.

**Claudia Clifford, AARP, Montana**, told the Committee that AARP had done a survey of their members in Montana and 85% said that affordable prescription drugs was their top legislative priority. To continue to study the issue is prudent. Prices of drugs increased three times the rate of inflation from September 2003 to September 2004. On average, manufacturers list price for 75 generic drugs, widely used by Americans 50 and older, have increased nearly four times the rate of inflation over the last three years. There is great concern over the high price of drugs.

**{Tape: 1; Side: A; Approx. Time Counter: 14.7 - 17.7}**

**Frank Cote, America's Health Insurance Plans**, said that one of the fastest growing expenses for health insurance policies is in the prescription drug area. That translates into higher premiums for those who are insured. He felt that a study was necessary and hoped that it would help in some small way.

**Neil Haight, Volunteer, AARP**, spoke that many insurance plans that exist involve a significant co-pay. He had insurance with a 50% co-pay, but was fortunate to be able to go out to Fort Harrison and get on the VA program. He urged the Committee to support the study.

**Harris Himes, Montana Family Coalition**, considered HB 723 a family-friendly bill and urged a do pass.

**{Tape: 1; Side: A; Approx. Time Counter: 17.7 - 21}**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. DON ROBERTS** had concerns with the direction of health care and the use of prescription drugs. One type of medicine does not always switch well with another type of medicine. He spoke about orphan drugs which means they affect less than 5,000 people. The expense is high and the return is poor. Companies have to help by directing and maintain an interest in orphan drugs. He asked about the ability of the U.S. to continue research and development of these drugs with increased regulations. **Mr. Iverson** agreed with the premise of the question. He felt that the U.S. consumer is subsidizing much of the world on research

costs. He did not know if a study would be able to do much about the problem. An awareness, though, would help to make better decisions. The U.S. international trade agreements could take some of the imbalances into account and patent life is also an issue.

**{Tape: 1; Side: A; Approx. Time Counter: 21 - 23.7}**

**REP. JONATHAN WINDY BOY** inquired of the sponsor if he would accept a friendly amendment that would tie HB 723 in with a bill that he, himself, had sponsored. **REP. BRANAE** replied that would be fine.

**REP. BILL WARDEN** inquired what other states had done concerning prescription drugs. **Mr. Kennedy** said that eleven states are in a Minnesota Multi-State Contracting Alliance for Pharmacy (MMCAP) area. In that area, Montana does buy pharmaceuticals in bulk for State institutions through that program. Other states have other types of drug-buying programs. He hoped that, in the interim study, all these different types of programs would be looked at. In Billings, at the Deering Clinic, a healthcare clinic, there is a Federal drug-buying program through their pharmacy. It saves clients a lot of money.

**REP. WARDEN** asked about the amount of money being requested.

**REP. BRANAE** replied that the amount of money is what was left over from where the money was found.

**REP. PAT WAGMAN** inquired why this study was not requested through a joint resolution. **REP. BRANAE** replied that since there was a specific amount of money requested, it was brought forward as a bill not a resolution.

**REP. TOM MCGILLVRAY** wondered if this study would take into account the misuse, abuse and over-prescribing of prescription drugs. **REP. BRANAE** did not think that was in the scope of the study.

**{Tape: 1; Side: A; Approx. Time Counter: 23.7 - 29.5}**

**REP. RON STOKER** inquired if there were any pharmaceutical manufacturers in Montana. **Mr. Iverson** replied, "Not as one would imagine." He did say that there are several smaller research facilities that may eventually become manufacturers.

**REP. STOKER** asked who the largest wholesaler was in Montana. **Mr. Jim Smith** said there were about three major wholesalers left in the Montana. The biggest is McKesson Corp. Most retail pharmacies do business with them. He named three others.

**REP. STOKER** wondered if any of the four had a location in Montana from which they ship to other states. **Mr. Smith** replied, "Not any longer." He said the closest is Spokane and Denver.

**Closing by Sponsor:**

The Sponsor closed.

**{Tape: 1; Side: A; Approx. Time Counter: 29.5 - 32}**

**HEARING ON SB 46**

**Sponsor:** SEN. JERRY ONEIL, SD 3, COLUMBIA FALLS

**Opening Statement by Sponsor:**

**SEN. JERRY O'NEIL** opened the hearing on **SB 46** which would clarify the duties and authority of the mental health ombudsman. The ombudsman should be able to access the files of clients whom he/she is attempting to help. SB 46 would clarify the duties and authority. This bill is supported by both the Ombudsman Office and the Department of Public Health and Human Services (DPHHS).

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 4.6}**

**Proponents' Testimony:**

**Bonnie Adee, Mental Health Omsbudman, Montana**, gave her testimony and submitted a copy of her testimony and a 2004 Montana Mental Health Ombudsman's Report.

**EXHIBIT**(huh56a01)

**EXHIBIT**(huh56a02)

**{Tape: 1; Side: B; Approx. Time Counter: 4.6 - 11.3}**

**Harris Himes, Montana Family Coalition**, stood in support of the bill.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. MCGILLVRAY** inquired why the Legislature in 2003 wanted to make the Ombudsman Office discretionary. **Ms. Adee** believed it was budgetary; extra dollars were hard to find.

**REP. MCGILLVRAY** inquired how many people were being served on an annual basis. **Ms. Adee** said approximately 400 contacts annually.

**REP. MCGILLVRAY** asked how much time is spent with a person and what is actually done for them. **Ms. Adee** said there was quite a range of inquiries. They categorize the calls: 1) a brief informational contact (one or two contacts), 2) a referral call to get them to the proper person, 3) a request for assistance to remove a barrier or help in getting to the correct service, and 4) investigate some improper act which requires more time (not too many of these calls).

**REP. MCGILLVRAY** questioned Ms. Adee if there was a report available. **Ms. Adee** said that was a report available and she would get one for him.

**{Tape: 1; Side: B; Approx. Time Counter: 11.3 - 14.7}**

**REP. WINDY BOY** asked why Section 4 was totally deleted. **Ms. Fox** explained that deletion went with the deletion on Page 2, Lines 20-22. At one time, it was believed that these sections would make a difference in dealing with Centers for Medicare and Medicaid Services (CMS). They ruled that the Mental Health Ombudsman could not have access to Medicaid eligibility information.

**REP. ART NOONAN** inquired if the Ombudsman Office has more than one staff person. **Ms. Adee** responded that she had one half-time person.

**REP. NOONAN** asked if the new authority is to hire more staff. **Ms. Adee** said that when the bill was being drafted, the specific ability to employee staff had not been clarified. She had employed that half-time person, but that didn't strictly fit with how the statute read; therefore, it had to be clarified.

**{Tape: 1; Side: B; Approx. Time Counter: 14.7 - 17.9}**

**CHAIRMAN ARLENE BECKER** asked if the Office of the Mental Health Ombudsman is attached to the Governor's Office for administrative purposes and asked if the appropriation for the Office comes from HB 2. **Ms. Adee** said that the Office of the Ombudsman is part of the Governor's budget.

**CHAIRMAN BECKER** asked if the new language, that states staff may be employed to carry out duties, is only for clarification for the 1.5 full-time equivalent (FTE). **Ms. Adee** agreed and said that there were no plans to hire more employees.

**CHAIRMAN BECKER** inquired if Ms. Adee had a supervisor that she reported to. **Ms. Adee** replied that currently she reports to the Family Policy Advisor in the Governor's Office and at times has reported directly to the Governor. She has served under three different administrations and each has had a different preference on how they would like her to report. The interim committee that requested this bill would like her to report to them regularly at their meetings. The Department also requires some reports from her.

**CHAIRMAN BECKER** questioned the kinds of information she had authority to obtain. **Ms. Adee** explained that Medicaid has an eligibility data base. Prior to the Federal Health Insurance Portability and Accountability Act (HIPPA) of 1996, the Department had given her direct access to that data base. With the implementation of HIPPA, she no longer had access. The hope was that if the Office of the Ombudsman was given health oversight status, she would have that access again as it had been very helpful in her work; but it doesn't look like that is going to happen. She said that if the client gives her written permission, she can access the data base for their information.  
**{Tape: 1; Side: B; Approx. Time Counter: 17.9 - 22.5}**

**REP. STOKER** wanted to know why the Office of the Ombudsman was in the Governor's Office and not in DPHHS. **Ms. Adee** explained that the ombudsman model has some principals associated with it and one of them is the principal of independence. That was the guidance from the Legislature in establishing the office as attached to the Governor's Office. Often, when people call, they are having a problem with DPHHS. They are pleased to know that the Ombudsman is not part of DPHHS.

**REP. WILLIAM JONES** inquired if the sponsor had served on the interim committee. **SEN. O'NEIL** replied that he had.

**REP. JONES** was confused because he thought HIPAA was for the benefit of the patient. He asked if DPHHS was using this information not for the benefit of the patient but for the benefit of themselves. **SEN. O'NEIL** could not answer that directly, but was glad there was an Ombudsman Office to help those who need help and to watch over DPHHS.

**Closing by Sponsor:**

**SEN. O'NEIL** was especially interested in access to justice for those who are least able to speak for themselves.

**{Tape: 1; Side: B; Approx. Time Counter: 22.5 - 29}**

**HEARING ON SB 308****Sponsor:** SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS**Opening Statement by Sponsor:**

**SEN. JERRY O'NEIL** opened the hearing on **SB 308**. This bill would inform a parent that they have a right to have a friend or an advocate with them during a meeting with a social worker when DPHHS has taken their child from the home. This is already in the Department's rule-making, but it is not in statute and not applied evenly across-the-board. The Department wrote this bill and are in support of it. The Senate was concerned that the process of a removing a child would be slowed down so they amended it to say that the child would be taken out of the home before the parent(s) was advised of their right to have an advocate with them.

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 3.5}**

**Proponents' Testimony:**

**Harris Himes, Montana Family Coalition, Montana Family Foundation, and Candy Matthews Jenkins**, supported the bill. He knows that a family needs an advocate or a friend when they meet with DPHHS because it can be a very confusing and stressful time.

**Opponents' Testimony:** None

**Informational Testimony:**

**Chris Purcell, Child and Family Services Division, DPHHS**, stated that she was available for questions.

**{Tape: 2; Side: A; Approx. Time Counter: 3.5 - 5.7}**

**Questions from Committee Members and Responses:**

**REP. JONES** wanted to know what the qualifications and training are for a social worker. **Ms. Purcell** said there are specific guidelines statewide for social workers. They are required to have a degree in social work or a related field and additional years of experience.

**REP. MARY CAFERRO** questioned the bill on Page 1, Lines 25-29 and asked if medical professionals are involved in the investigation of abuse and neglect and are they involved in the subsequent process. **Ms. Purcell** replied that medical people may be involved depending upon the nature of the referral. They quite often make the first report.



**REP. WARDEN** did not understand why the Senate amended out some of the language. **SEN. O'NEIL** did not think the language was unreasonable either; but, he believed that it had been put back in other parts of the bill.

**REP. STOKER** asked for a step-by-step account of how a parent would be notified of a meeting after the child had been removed from the home. **Ms. Purcell** explained that it would hinge on the situation. As she understood it, once a child is removed, as soon as possible thereafter, a parent would be given the information in writing in regard to their ability to have a representative accompany them to a meeting with DPHHS. It would be a part of the court order as well.

**SEN. O'NEIL** related a story that he had been involved in. He was their advocate and helped them to be focused and to stay calm in their meetings with DPHHS. In the end, the Department admitted that they had removed the child under misguided information.

**REP. STOKER** inquired if the person could be either a friend or a professional person. **SEN. O'NEIL** stated that it could be anyone.  
*{Tape: 2; Side: A; Approx. Time Counter: 5.7 - 17.7}*

**REP. EMELIE EATON** reiterated that it can be anyone the parents desire to accompany them and speak for them if necessary.

**SEN. O'NEIL** agreed and said that he believed parents would get the best person available. If the "public defender" bill passes, they would get a public defender, which might be better than this bill. Right now that is not an option for parents. This bill is the best that can be done for them, at this time.

**REP. EATON** asked if the parents were unhappy with the person they chose, could they choose someone else to continue on with them.

**SEN. O'NEIL** responded that they probably have a right to change the person every time they meet with DPHHS. That wouldn't change anything that had happened in the prior meeting(s).

*{Tape: 2; Side: A; Approx. Time Counter: 17.7 - 22.8}*

**Closing by Sponsor:**

The Sponsor closed.

*{Tape: 2; Side: A; Approx. Time Counter: 22.8 - 25.5. REP. FACEY returned to the hearing and REP. CAFERRO left the hearing.}*

**EXECUTIVE ACTION ON SB 29**

**Motion:** **REP. ROBERTS** moved that SB 29 BE CONCURRED IN.

**Discussion:**

**REP. ROBERTS** explained the bill. It deals with people who have been convicted of a drug felony, served their time and when they come out of prison they have no financial help because of this type of felony. DPHHS believes that with some financial help, they would be able to put their lives back together as a family.

**CHAIRMAN BECKER** added that she was shocked to learn this only applied to drug felony charges and to no other criminal charges.

**Vote:** Motion carried 10-6 by roll call vote with **REP. HENDRICK**, **REP. MCGILLVRAY**, **REP. MILBURN**, **REP. STOKER**, **REP. WAGMAN**, and **REP. WINDY BOY** voting no. **REP. CAFERRO** voted by proxy.

REP. ROBERTS will carry the bill.

*{Tape: 2; Side: A; Approx. Time Counter: 25.5 - 29.8; Comments: REP. CAFERRO returned to the hearing.}*

**EXECUTIVE ACTION ON SB 121**

**Motion:** **REP. WARDEN** moved that SB 121 BE CONCURRED IN.

**Discussion:**

**REP. ROBERTS** commented that in the last legislative session, a bill was passed to allow prisoners in Yellowstone County Jail to pay for some of their own care and it has worked admirably. If a person has means, they should pay for some of their mental health care while incarcerated.

**REP. MCALPIN** inquired as to what the prisoners paid for in the Yellowstone County Jail. **REP. ROBERTS** said that if a prisoner had insurance, that would be the first pay before the state or county kicked in.

*{Tape: 2; Side: A; Approx. Time Counter: 29.8 - 32}*

**Vote:** Motion carried unanimously 16-0.

REP. WARDEN will carry the bill.

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 2.1}*

EXECUTIVE ACTION ON SB 127

Motion: REP. HENDRICK moved that SB 127 BE CONCURRED IN.

Motion: REP. HENDRICK moved that SB 127 BE AMENDED.  
[EXHIBIT](#) (huh56a03)

Discussion:

REP. HENDRICK explained the amendment which added one word "seriously."

Vote: Motion carried 15-1 by voice vote with REP. WINDY BOY voting no.

Motion: REP. HENDRICK moved that SB 127 BE CONCURRED IN AS AMENDED.

Discussion:

Ms. Fox explained the bill. It involves multiple waivers that DPHHS already has and it will bring statutes into compliance with what is already happening.

REP. HENDRICK inquired about a fiscal note. Ms. Fox said there was no impact shown on the general fund.

CHAIRMAN BECKER wondered if there were any opponents. REP. HENRY replied there had been two informational witnesses and no opponents.

Vote: Motion carried 15-1 by voice vote with REP. WINDY BOY voting no.

REP. NOONAN will carry the bill.

*{Tape: 2; Side: B; Approx. Time Counter: 2.1 - 8.2}*

EXECUTIVE ACTION ON SB 153

Motion: REP. WINDY BOY moved that SB 153 BE CONCURRED IN.

Discussion:

REP. HENRY, REP. FACEY, REP. STOKER, REP. NOONAN and Ms. Fox discussed the goals and performance indicators and how progress

was to be reported. The website is in operation at the present time and shows the progress of certain departments. It was questioned if the bill would require a lot of time for updating the website. The website would show legislators if a division was meeting their goals and would also be able to show justification for their budgets.

**REP. STOKER** was not sure if the bill would do what the sponsor was hoping for. The bill was, in essence, a micro-management bill.

**REP. NOONAN** said that the technical note was not to be included in the bill. It was a footnote.

**Ms. Fox** did not understand the Department's concern on the technical note. She thought it was better explained on Page 6, Lines 4-6.

**REP. EATON** asked how the bill would help the legislators to know more of what DPHHS is doing. **Ms. Fox** offered that it would make the Department report to the appropriate interim committee. This has been done in the past. An interim committee has little authority in the interim, but many bills that come to the Legislature have been requested by an interim committee. This bill would help the learning curve of legislators.

**{Tape: 2; Side: B; Approx. Time Counter: 8.2 - 22.5}**

**REP. CAFERRO** concurred with Ms. Fox and felt that the bill would make the Department more accountable.

**REP. FACEY** pointed out that there is a termination date. If the idea doesn't work during the next biennium, it will not be repeated.

**REP. MCGILLVRAY** was in support of the bill. The Department should report their goals and their progress.

**Vote:** Motion carried 13-3 by roll call vote with **REP. STOKER**, **REP. WAGMAN**, and **REP. WINDY BOY** voting no.

**REP. FACEY** will carry the bill.

**{Tape: 2; Side: B; Approx. Time Counter: 22.5 - 26.6}**

**EXECUTIVE ACTION ON SB 156**

**Motion:** REP. FACEY moved that SB 156 BE CONCURRED IN.

**Discussion:**

REP. WINDY BOY believed that the Federal Poverty Level (FPL) had been in place since the 1950's. He saw a need for an increase.

REP. ROBERTS understood that the bill would just put into place a higher level of FPL in case it would be needed. The bill seemed to be looking for a solution with no problem.

REP. MCALPIN thought there might be a problem in the next session.

REP. MCGILLVRAY said that with so many children on the waiting list at 150%, it did not make sense to increase the FPL.

REP. MILBURN felt that 200% of FPL was excessive. The State of Montana cannot afford to put more people on welfare.

*{Tape: 2; Side: B; Approx. Time Counter: 26.6 - 32; Comments: The discussion continued on Tape 3, Side A.}*

REP. CAFERRO said that the bill is not about funding CHIP. If the Department is in a position of having more money than kids, they can change the eligibility level between now and the next legislative session. She handed out a table showing the impact on funds to cover eligible children at current income levels.

**EXHIBIT** (huh56a04)

*{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.0}*

REP. STOKER said that there is an income level at which point the parents need to accept the responsibility to take care of their own insurance requirements for their children.

REP. EATON, REP. CAFERRO, REP. MCALPIN and REP. FACEY discussed the advantages the bill: receiving more Federal funds and flexibility for the Department.

REP. ROBERTS believed that the bill would increase the welfare rolls if the FPL is raised and Montanans cannot afford it.

REP. HENDRICK asked if the Federal grant remains the same every year whether it is used in that year. REP. CAFERRO said that was right.

**REP. MILBURN** felt that the State should not be encouraging more and more people to get on government programs. The thought should be to wean people off government programs. Even with the Federal grant, it still costs Montana taxpayers. The State should also be responsible to the Federal Government.

**CHAIRMAN BECKER** said the bill would allow the Department to be flexible and to get more children on health care and questioned the contingent termination date.

**Ms. Fox** explained that the reason for the contingent termination date in the bill is because of the new language. From the beginning of CHIP, there has always been a contingent termination date. In order for the contingent termination to apply to the new language, the code commissioner decided that it had to be stated in the bill.

**REP. NOONAN** said that regardless of whether the opportunity is available for more people to come into the system, at some point people, who are able to pay, should be expected to pay for their own insurance. Some people in another state may not be able to pay and they are the ones who should get any leftover money. However, he did feel that a family of four earning \$38,000 might need help as well.

**REP. JONES** pointed out that the Department would not necessarily jump right to the 200% FPL. They can go anywhere in between 150% and 200%.

**REP. WARDEN** reiterated that the bill is a solution looking for a problem. In talking with Chuck Hunter, DPHHS, he was told that at the 150% level, there was probably another 20,000 eligible children. He was not going to vote for the bill.

**Vote:** Motion failed 8-8 by roll call vote with **REP. BECKER, REP. CAFERRO, REP. EATON, REP. FACEY, REP. HENRY REP. MCALPIN, REP. NOONAN,** and **REP. WINDY BOY** voting aye.

**ADJOURNMENT**

Adjournment: 5:45 P.M.

---

REP. ARLENE BECKER, Chairman

---

MARY GAY WELLS, Secretary

AB/mw

Additional Exhibits:

**EXHIBIT ([huh56aad0.PDF](#))**